

THE SPEECH
OF A
MEMBER
OF THE
Constitution-Club
at Oxford, Feb. 9. 1715-16.

Oxford, Jun. 10, 1715.

" W H E R E A S it hath been reported, both
" before and since the 28th Day of *May*
" last, the Birth-day of His Majesty *K I N G*
" *G E O R G E*, whom God long preserve,

" That the Gentlemen of the Constitution-
" Club did prepare, or make, or employ Per-
" son or Persons to prepare or make the Effi-
" gies of the *late Queen*, or the Duke of *Ormond*,
" with an intent to burn them, or either of
" them in the Bon-fire they designed to make
" on that Day,

" We therefore the Deponents, whose Names
" are under-written, do voluntarily make Oath,
" that the said Report is all and in every Part
" of it, *groundless, false, and malicious*; and that
" we never did, either jointly or severally,
" prepare or make, or employ any Person or
" Persons to prepare or make any such Effigies,
" or so much as propose it at any of our Meet-
" ings, or at any other Time, declare that we
" or either of us intended the same.

This Deposition was made and signed before
Mr Vice-Chancellor, by all the Members of the
Club then in *Oxford*, and by the rest before
some Justice of the Peace in other Places.

THE
S P E E C H
O F A
M E M B E R
O F T H E
Constitution-Club
at *Oxford*, Feb. 9. 1715-16.

Being His
D E F E N C E

Against certain ARTICLES Exhibited against him and several other Gentlemen, in the *Chancellor's Court* there.

Acts xxv. 8. — *He answered for himself, Neither against the Law, neither against the Temple, nor yet against Cesar, have I offended any thing at all.*

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APPENDIX

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MEMBER

OF THE

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(i)

The SPEECH of a Member
of the Constitution-Club at
Oxford, Feb. 9. 1715-16.

Mr Assessor,

The Judge
of the
Chancel-
lor's Court.

ALTHO' I do not apprehend any thing very Material against me in the Depositions which have been read before you; yet I think my self obliged not to sit down in Silence in this Cause, as well on account of my own Reputation, as for the Satisfaction of my Superiors.

Of the 13 Articles which have been exhibited against me, the four first being only Art. 1, 2, Positions of Law, or Citations of Statutes which I am accused to have transgressed; I need only acknowledge the Truth of them, and pass to the 5th.

Which is the first Article of Fact, the Art. 5. first Charge of a Criminal nature.

It contains in Substance, That (notwith-
standing the Statute of the University appoint-
ing a Penalty of 6s. 8d for being at a Pub-
lick House) I was on the 28th of May last
voluntary present at the Kings-Head Tavern.

I answer, That I do voluntarily acknowlege that the said 28th of May, being the Birth-Day of King G E O R G E, I did, in Com-

pany with several worthy Gentlemen, voluntarily repair to the said Tavern ; in order to drink Health and Prosperity to His Majesty, and all His Royal Family.

But whereas the Statute remits the Penality upon any reasonable *Cause to be approved of by the Vice-Chancellor or Proctors*, I desire the aforementioned Demonstration of my Loyalty may be accepted as a sufficient Excuse.

If this Excuse be not admitted, my Plea is this, and I alledge, with Submission to the Court, that the Chancellor's Court cannot properly, legally, and statutably, take Cognisance of this Matter: It doth not fall within the Jurisdiction of the Office.

My Reason is this.

The Statute in all Cases of this nature is plain and expres, that we must be *deprehensi*; which Word, I understand to signify *actually taken, or personally caught upon the place*.

You were pleased the other Day, Mr. *Assessor*, to deliver your Opinion against this limited sense of the Word, saying, that the Meaning of *deprehensus* was *found out by any legal Method*.

You will excuse it therefore, if on account of my necessary Defence I produce those few Authorities in the Civil Law, which I have since had Opportunity to consult.

Depre-

Deprehendere est quod Barbæri dicunt capere in ipso facto, says *Calvin* in his *Lexicon Juridicum*, and *Spigelius* in his *Lexicon Juris Civilis*.

In the Body of the Civil Law published at Geneva, I read the following Note, *Ad Legem si Parsatorem* (*Cod. lib. 8. Tit. 41. leg. 13.*) *Advertas quod hanc legem notant Doctores ad Questionem*,—*Pone Statutum dicit, Si quis de nocte fuerit inventus cum armis punietur tali pœna. Visus est aliquis cum armis in nocte, au incideret in pœnam?* —*Et dicunt Doctores communiter quod non: Sed requiritur quod fuerit corporaliter apprehensus.* Which Opinion is there confirmed by several Authorities.

Julius Clarus makes the Case still plainer, by proposing the following Question (*Sententiarum lib. 5. Stat. 6.*)

Quid si Statutum Puniat prehensum, cum armis, nunquid habebit locum in eo, qui non fuerit captus cum armis, sed testibus convictus quod ea detulit? He says indeed, that the Glossary and *Ripa* hold the Affirmative. On the other side he quoteth Authorities, and declareth his own Opinion in the following Words, “*sed certe consuetudo totum servat contrarium* (*ut attestatur Did. in Prac. q. 33.* dicens in fine, *quod frequenter consuetudo in toto orbe Christiano est quod arma prohibita deferens nunquam ea amittit nisi effectualiter fuerit prehensus,*

*' etiam si constet illum arma detulisse. Et
' ita servarem si casus contingere.*

So that when the Statute says, that one who is *deprehensus* shall be so and so punished, to punish that Person when only convicted by Witnesles, and not taken *ipso facto*, is contrary to the Custom of the whole Christian World.

I will not deny but that some Commentators in some Cases do extend the Words *deprehensus in criminis*, so far as to signify *Convictus*: As when the Crime is of a heinous, unlawful and publick Nature, and when the Interest of the Community requires that it should be punished. But slight Faults of a private Nature, and in which the Good of the publick is not concerned, are expressly excepted.

For an instance of this Distinction *Sicardus* upon the Law *Si Barsatorem* puts the following Case, which is very near the same with our own.

Statutum est in hac Schola, ut qui noctu fuerit inventus cum lumine, aut tumultuari, vel cum armis, vel ludens, ut sit teneatur certa pena: non dicetur inventus nisi apprehensus.

And that he takes *inventus* to be of the same Signification with *deprehensus* appeareth by his following Words, *in furto quidem aut Homicidio satis dicetur quis apprehensus*

*deprehensus vel inventus, si fuerit probatum
cum esse furem vel Homicidam.—Quoniam
reipublicæ interest ut puniatur, sufficit tan-
tummodo probatum esse crimen.*

He alloweth the Word *deprehensus* to signify *Convicted* only in such enormous Crimes as Theft and Murder, &c. and where the good of the Community and publick Safety require that the Offender should be brought to Justice.

But for Scholars to be at a publick House, and especially only between the Hours of 7 and 9, is a Crime of no such publick or heinous Nature; neither does the Interest of the Nation by any means depend upon the Punishment of it.

The Statute against it is a dormant Statute, and is not *once* put in execution within the Compass of *many Years*.

And as this Limitation of the Word *deprehensus* to its most usual and plain meaning, namely, *taken ipso facto*, is justified from the Nature of the Offence; so is it likewise from several Circumstances in the University Statutes.

In the foregoing Statute except one (*Tit. 15. §. 3*) against Scholars being present at the Assize-Hall, a Penalty is to be inflicted *unicuique ibidem deprehenso*, taken *there, upon the place.*

In the immediately preceding Statute which forbids Scholars to frequent Townsmens

mens Houses (which is parallel to the present Case) it is said, *si quis in iisdem vel eārum aliqua deprehensus fuerit*, taken in any of those Houses.

And again in this very Statute the Words are, *sic deprehensus*, so taken.

I observe likewise that the Statute often says, that the Offenders shall be punished *pro arbitrio Vice-Cancellarii aut Procuratorum, qui deprehenderint*. Whereas according to this Court-sense of the Word, they cannot be *taken* by the *Proctors* at all; Those who are prosecuted in the Office are not *deprehensi* by the *Proctors*, but by the *Court*; nor are they punished *pro arbitrio Procuratorum* but *pro arbitrio Judicis*.

I find also in the Statutes, *si quis deprehendetur* in the *future Tense*, and *si quis deprehensus fuerit* *delinquens*, & *deprehensus interesse* in the *present Tense*, as an Argument that we must be taken in the Fact; But can no where see *deprehensus delinquisse*, interfusse in the *past Tense*, to countenance a Prosecution of this Nature.

There is an instance of this Distinction in *Sicardus* so very apposite to the present Case, that it almost seems calculated on purpose: But I shall not trouble the Court with the Repetition of it after it hath been Spoken to by Mr *Thomas*.

Mr.

[Mr Assessor desiring to hear the Case again,
The Defendant read it as found in *Sicardus*
in *Cod. lib. 6. Tit. 1. l. 3. de servo fugitivo.*]

Distinguendum est circa illud verbum deprehensus quia aut ponitur circa maleficium quod jam est commissum, ut si dicatur, quisquis deprehensus fuerit fecisse homicidium, ei amputabitur caput. Quia verbum est relatum ad malificium præteritum, ideo deprehendi dicitur non tantum si quis dixerit se interfuisse homicidio, verum etiam deprehensus diceretur qui per testes convinceretur.

Si autem illud verbum (sc. deprehensus) referretur ad futurum delictum, tunc requiretur actualis deprehensio.—Exemplum.— Dicit Statutum Universitatis, si quis deprehensus fuerit ex Studentibus qui Lupercalibus personatus ambulaverit, luet pænam unius aurei : Unde si post Lupercalia aliquis deferratur Rectori tanquam deprehensus Larvatus is poterit dicere verba sic sonare, quicunque fuerit deprehensus larvatus, sed se a nemine esse deprehensum actualiter. Et si deinde dicatur, posse testibus probari, id testimonium non recipitur, quia verbis Statuti est standum.

I beg leave also to add, that this Procedure seems no more Reasonable than Statutable. The Penalty by the Statute for being taken in a Publick House is determined to be 6s. 8d. as a sufficient Punishment for such a Fault : But by this means (so

numerous

numerous, tedious, and expensive are the Formalities of the Civil Law) it may probably amount to 5*l.* a Punishment neither adequate to the Fault, nor agreeable to the Statute.

This is no light Matter, but may prove of dangerous Consequence. The Statute says, that *any one taken at a Publick-House shall for the 1st and 2d time pay 6*s.* 8*d.* For the 3d he shall be imprisoned a Month, for the 4th be expell'd the University.*

Now how few of the whole Matriculation have not been four times in a Publick-house? And if the Statute be allowed to be put in execution, whenever the Court shall think proper to make a strict research, and examine Drawers &c. upon Oath; sure I am that we ought all to look about us, and to observe upon what a precarious foundation our Privileges stand; to consider that we are liable to Mulcts, Imprisonment, or Expulsion, at the sole pleasure of the Vice-Chancellor: Nay, that it lies in his power even to extirpate the University, and by expelling all its Members, to destroy and abolish the very Name and Thing.

There is no doubt but many other Reasons might be urged, many more Authorities easily produced by any person of a tolerable Knowledge in the Civil Law. These few will I hope be thought a sufficient foundation for my Plea, that Mr Vice-Chancellor

Chancellor cannot regularly promote the Office against me. And I am persuaded that such a Construction of the Word *deprehens* will not be received, as shall be found contrary to *Law*, to *Statute*, to *Reason* and *common Sense*; and may be fatal in the consequence.

The 6th Pretended Article being only ^{Art. 6.} *That the*
a general Charge, is answered by a gene- ^{Constituti-}
ral Denyal. ^{on-Club is}
^{a Conven-}

The 7th pretended Article (which is a Specification of the former) sets forth, *That some time within the space of a Year before the 28th of May last, I did institute, or at least was present at an unlawful Club, or Conventicle at the Kings-head-Tavern, in which it was proposed, consulted, or deliberated, to do something extraordinary against the publick Peace and Tranquillity of the University on the 28th of May then coming. And that I, or some one in my Company, did declare, that what was so consulted about would Affront the University, or the Vice-Chancellor, and occasion a Mob. And that in order to carry on such Consultation the more secretly and clandestinely I, or some one in my Company, did bid one Francis Clarke a Drawer to go out of the Room.*

Upon the single Evidence of Clarke this Charge of a Conventicle is supported.

C ¹⁰ It

It is a known Sanction of the Imperial Law, (*Cod. lib. 4. Tit. 20. l 9*) that one Witness alone shall not suffice in any Cause, altho' he have the Honour to be a Senator. And shall a Mercenary Drawer, who lives by Half-pence and Farthings, and the Droppings of a Tap, be heard against so many Gentleinen of unexceptionable Characters, of known Honour and Integrity?

But I need not insist upon the insufficiency of one Witness: Because Clarke is no Witness at all: His Evidence is deficient in all the Properties of a full and just Proof; and specifieth no Time, no Place, no Person, no Thing.

The first part of his Deposition (as far as it relateth to the Conventicle) is this, *that I, with several others of the Constitution Club, did consult and deliberate about doing something extraordinary on the 28th of May, against the Publick Peace and Tranquillity of the University.*

No particular Time is here specified when, no Place where, this Consultation was. As to the Day, or Week, or Month, or Year; the House, the Town, the Nation, he is entirely loose and undetermined. And perhaps it is not without Reason that he is so extremely cautious. Had he mentioned any particular Time, or Place, it is fifty to one but that some of us might have proved our-selves to have been at that time in another Place.

Neither

Neither will he venture to be more particular as to the *Thing consulted.*

His Words are, *That we did deliberate about doing something extraordinary on the 28th of May, against the Peace of the University.*

Something extraordinary! What? — Did any of our Company use any Words to this Effect, *We will do something against the Peace of the University?* Or if any one did, who? — No, this he doth not, cannot depose: But contrary to that settled maxim of Law, that *a Witness is not an Interpreter or a Judge,* takes upon himself (impudently as well as impertinently) to determine what is against the Peace of the University. Had he condescended to specify in his Deposition, what was the Subject-matter of our Deliberation, it might then have been decided by a proper Judge, whether it were, or were not, against the Publick Peace of the University. But for himself to pronounce Sentence, carries a shew of more than ordinary Authority; and Ages to come cannot but look upon the Constitution Club as a Conventicle, it being the Opinion of that eminent and Self-sufficient Lawyer, *Francis Clarke the Tapster.*

But he hath cleared up the Matter in the Interrogatories; and to our Question, *what that Something extraordinary was,* returned this fair Answer, that *he can't tell*

The following Words of Clarke's Deposition I suppose to be designed for a Reason or Proof of his former Assertion ; namely, that *some of the Company said this would affront the Vice-Chancellor, make a Disturbance, or occasion a Mob.*

And here again we are at a loss for Particulars, and especially who the Person was that spoke these Words. — But whosoever it was, it might be but his single Opinion that such or such a thing (the Result of a certain Consultation in the Clouds) would affront the Vice-Chancellor, or occasion a Disturbance : All the rest of the Company might think far otherwise ; and so, Sir, might you, if Mr Clarke had not kept the Matter as a Secret. Besides,

It is possible that a thing very innocent in it self, and by no means intended to disturb the Peace, might, accidentally and by *mistray construction* affront the Vice-Chancellor, or make a Disturbance.

I must add, that Clarke's Evidence is a *disjunctive Proposition*, one Part of which may be true, and the other Parts false. The Article indeed useth the Conjunction Copulative *and*. — *that what was so consulted would affront the University, or the Vice-Chancellor, and occasion a Mob.* But the Evidence falls short of the Charge : It makes no mention at all of the *University,*

sity, and puts the Parts of the Sentence disjunctively thus, — *affront the Vice-Chancellor, make a Disturbance, or occasion a Mob.*

We will suppose then (but not own) the first Part of the Proposition, *that this Something would Affront the Vice-Chancellor,* to be true: A Conventicle can never be built out of these Words; nor do they prove any the least Intention to disturb the publick Peace of the University: And that for this plain Reason, because every Affront is not a Disturbance of the Publick Peace, nor is the Vice-Chancellor the University.

In fine; what is here alledged as an Argument of Guilt, is a manifest Token of Innocence. For if some Person did declare that such a thing (be it what it will) *would Affront the Vice-Chancellor, or occasion a Mob;* the natural Consequence to be drawn from such a Declaration, the equitable Construction is, that we would not consent to any thing which might prove even the innocent Cause of any Offence or Disturbance.

So that the Compiler of this Article hath endeavoured to charge a Fact upon us, because we were against it: And to prove us guilty by that very Reason which shews that we are not guilty.

Clarke

Clarke deposeth likewise, That some of the Club observing him to be in the Room ordered him to be gone: Which very probably is true. But that this was done in order to carry on any Consultation against the Publick Peace, is absolutely false.

It is a very strange and hard Construction, that because we would not permit a Drawer to be one of our Company; we must immediately be accused of some ill Design. Doth not every Gentleman take the Liberty to send away a Drawer, tho' the Discourse be never so Harmeless and Peaceable?

The Substance then of the 7th Article, and of that weak, and lame, and blind single Evidence which was to support it, amounts to this:

That at a certain Time, no body knows when; Something was consulted, no body knows what; by some-body, no body knows whom; against the Peace of some University.

The Proof (as I take it) is two-fold;

- 1st. Because what was so consulted was opposed for fear it might by accident Affront a Vice-Chancellor, or occasion a Mob: and

- 2dly. Because a sawcy Drawer was not thought fit Company for Gentlemen.

I know not whether I ought to take notice of a small Circumstance in Clarke's Deposition,

Deposition, which is this; *That the Members of the Club used (as he fashionably expresseth himself) to toast Healths out of a Book, and he particularly remembers that Mr L — used to toast Mr HOADLY's Health.*

With what Design, or to what Purpose this Deposition is made, is not easy to conjecture: But if that be any Satisfaction, I shall acknowledge the Truth of it; and declare withal, that we were not worthy to take the venerable Name of the *Constitution* within our Lips, should we not remember and value that Vertuous, Learned, and Unanswerable Defender of it.

The 8th pretended Article chargeth me ^{Art. 8.} with gathering together, or causing to be gathered together, and procuring a Multitude or Mob by various Ways and Means specified in the next Article: to which accordingly I refer my self.

The 9th pretended Article alledgedeth, ^{Art. 9.} that in order or with Design to gather a Mob, I did on the 28th of May last, bring or heap together, or cause to be brought and heaped together, in the publick Street before the Kings-head Tavern (being an unusual Time and Place for Bonfires and Illuminations to be made or procured by Scholars) a great number of large Loggots, and did erect the same, or cause the same to be erected into the form of a Bon-fire: And did likewise place,

place, or cause to be placed, great numbers of Candles in the Windows of the said Tavern in order to be lighted up.

Sir, that I (and others in my Company) did order a Bon-fire and Illuminations on the 28th of May last, is true. But I desire to distinguish between the *Facts* themselves, and the *Consequence* with which those Facts are charged.

Are Bon-fires and Illuminations forbid either by the Law of Nature, or by any Positive Institution Humane or Divine? Is there any moral Turpitude in them? Or are they contrary to any Statute of the Realm, or Ordination of the University? No. The frequent use of them even by the Governours of the University will evince the contrary. So that it must be some peculiar Circumstance, or Aggravation that can render them criminal.

To which purpose it seems to be exhibited, that our Bon-fire and Illuminations were designed on the 28th of May, in the Publick Street before the Kings-head Tavern (being an unusual Time and Place for Bon-fires and Illuminations to be made or procured by Scholars.)

Gladly would I be informed, why because a thing is unusual it becomes thereby unlawful; willingly learn from some Person or Author learned in the Law, what particular Times and Places are precisely deter-

determined, and peculiarly set apart for Bon-fires and Illuminations; and especially where and why these things are forbid on the 28th of May, and in the Street before the King's-head Tavern.

That the 28th of *May* was an *unusual Time* for Bon-fires—is indeed true, and it could not well be otherwise: Unless we had celebrated King *GEORGE'S Birth-Day*, before he came to the Crown, which was effected but on the 1st of *August* preceding.

So that it was our *Misfortune* rather than our *Fault* that his Majestys Birth-Day should happen out but once within the compass of nine Months. However as this is a Fault which will probably mend every Year, we hope no Advantage will be taken from the unavoidable unusualness of the first Time; no Censure be passed upon such a glorious *Innovation*.

But the Publick Street is also an *unusual Place* for Bon-fires and Illuminations.— Is the Publick Street an unusual Place for *Bon-fires*? And is it usual to make them in Private Houses? Or why not in the Publick Street before the *King's-head Tavern*, as well as in the Publick Street, before *All-Soul's College*, or in any other parts of the Street.

And whereas it is further added, that the Publick Street before the *King's-head*

D is

is also an unusual Place for Illuminations to be made in ; neither my self nor any in my Company will contest that Point ; but readily acknowledge that it may be a little unusual to make Illuminations in the middle of the Street.

But the Sting of this Article seems to lie in the following pretended Aggravation, that we appointed this Bon-fire and Illuminations *in order or with an Intention to gather a Multitude or Mob.*

If a Mob, or a Tumult, be the necessary Consequence of a Bon-fire, we shall find it difficult to excuse our Intention, But then I shall beg leave to ask, with what intent do the Governours of the University appoint Bon-fires ?— If they are guilty of designing a Tumult, so may we : But if they are not guilty, neither are we.

But because some Depositions are brought, I suppose, to prove our Intention, I desire to consider them distinctly.

One Constable (a Drawer) deposeth, *That our Faggots caused great numbers of People to assemble.*— Possibly so, and yet we might not design or invite that hopeful Assembly.

Mr Goodson saith, *That great numbers of People gathered together on account of this intended Bonfire in a riotous manner.*—

It may well and justly be said that they gather'd

gather'd on account of this Bon-fire, because they were before-hand hired and encouraged to prevent this and every other Demonstration of a Loyal Joy on that happy Day.

Clarke deposeth, That these Actions (i. e. some Actions of his own) occasioned great numbers of People to come together, who pulled down the Faggots, fearing the Tavern might be fired, as some of them said.

The whole number of Faggots was but a quarter of a Hundred, and these were divided into two Bon-fires. Mr Goodson and others observe, that only *some* of these Faggots were set up in form of a Bonfire; the rest being reserved for another.

And who knows what might have been the Consequence of lighting twelve Faggots at once in a wide Street, where they had so much room to do mischief? And why should not this Bon-fire be thought too large by those Persons, who would have thought *any* so on the 28th of May?

But in truth, Mr *Affessor*, the City was not in danger from our Bon-fire, but from the malicious and premeditated Opposition that was made to it, from the Seditious and (I may add) Treasonable Clamours of and Practises some *disaffected Incendiaries*.

Mr *Prince* is an Evidence on the same side, and being a Member of the Univer-

sity, gives a weighty and conclusive Reason for what he deposeth : *That he seen a great number of Faggots erected* — : And that this intended Bon-fire (as he believes) was designed to draw great numbers of People together : *For the Mob did gather together upon bringing the Faggots.*

Which may be equally true in Fact, and good Logick.

Suppose I should Reason thus : I saw three High-way-men knock down and rob a Traveller upon *Hounslow Heath* : And this Traveller (as I believe) came to *Hounslow Heath* with a *design* to be knocked down and robbed ; for he was knocked down and robbed upon his coming thither.

Extremely probable, as well as consequential ! But so far the Parallel will hold, that we were no more the occasion of a Riot by making a Bon-fire, than that Person was guilty of robbery for carrying Money in his Pocket.

~~Mr~~ Prince adds, *That he heard that the Club did order the Bon-fire to be made with an Intent to congregate the Mob together.*

He heard so : From whom ? — Perhaps from these very Persons, who had the modesty to invent the Calumny.

~~Mr~~ Goodson also, and others, heard it creditably reported that the Club had a design to burn the Effigies of the late Queen, the then Duke of Ormond, and Dr Sacheverell.

Sir,

Sir, it is very well known that Reports of this nature were industriously spread about, not only in this Place, but several other parts of the Kingdom at the same time, as a Propular Pretence to enflame the giddy Rabble.

But as we kept no manner of Correspondence with the Authors and Promoters of these Rumors, so it happen'd that the whole Town was informed of our evil Designs long before we had conceiv'd them: We were the last that were acquainted with our own Intentions.

Give me leave then to think at least our Usage a little hard.

We are first loaded with the grossest Falshoods, and most unjust Calumnies by Persons, who having no Honour of their own, bear but small regard to the Reputation of others. Afterwards they turn the edge of their own Guilt npon us, and we must be made a Sacrifice to a Mob provoked and enraged by their wicked Suggestions. And now again the same groundless Reports are renewed as Evidence in a Prosecution at Law.

But it is time to come to the last part of this Article, which sets forth, that Farthings and Half-pence were thrown out of the Windows by me or some in my Company.

I am by no means satisfied of the Guilt or Truth of this Charge: This I can and do

do affirm, that when first I entered the Room, the Windows were all shut; an Order was made that no Money should be thrown out: Neither were the Windows opened, till they were broke in pieces by a Volley of Stones.

There is but one Witness who is positive that any Money was thrown out by any of our Company, and he cannot specify the particular Person. And whoever it might be, he did not do it by my Procurement or Encouragement, or even to my Knowledge.

*But be that matter as it will: When we saw Money so plentifully scatter'd among the Croud, when we heard them provoked to assault us by tumultuous Clamors, *an Ormond, a Bolingbroke, down with the Bon-fire, down with the Constitutioners, &c.* It became reasonable as well as natural to think of Self-preservation.*

I shall give no more Trouble upon this Article, in which I conceive nothing to be proved against me, but that I was one of those who intended to make a Bon-fire and Illuminations on King G E O R G E's Birth-Day: A Charge which I trust I shall never be ashamed to acknowledge: An Intention, for which if all the World should condemn me, I would stand single and absolve my Self.

Art. 10. The 10th Article objecteth to me as Criminal, That some Person did give me and my

my Company timely and sufficient Warning that there was reason to fear that the Windows of the Tavern would be broken, and the House much damaged, if we proceeded in making a Bon-fire and Illuminations; Notwithstanding which we did wilfully, perversely, and obstinately proceed in and towards making the said Bon-fire and Illuminations; and did make Illuminations.

Pursuant to part of which charge, Clarke deponeth, That Mr Thomas commanded him to light the Candles, which he refused to do, fearing the Windows might be thereupon broken.

Suppose we did not think Clarke's Fears to be well grounded;—Did a Bon-fire or Illuminations give any just Cause for such an insolent Assault? Is this Treatment what ought to have been expected as the natural Consequence of our seasonable Joy? Or were the Principles of this Place notoriously such, as to make us necessarily conclude that Illuminations on the K I N G's Birth-Day must draw upon us a Storm? Certainly not.

On the other hand, suppose we did believe Clarke's Fears to be just.—What! Must not I be permitted to do an innocent or a laudable Action, for fear opposition should be made to it? Shall I be arraigned for travelling upon the Road, because it can be proved that I had warning there was

Danger

of Robbery ? Nay, must I cease to be Loyal, because another is resolved to be a Rebel ? — I will not so far be brought under the Power of any : And tho' my Behaviour may possibly be misinterpreted as *Imprudence*, it can never be construed as a *Crime* : I may be thought a *rash Fool* ; but I will not be threatned into a *Coward and a Knav*e.

But indeed I am afraid this Article is a *False Brother*, crept in with a design to ruin the Cause, which it would be thought to serve.

For if the Drawer could easily observe such to be the Temper of the People, as to give just Grounds of fear that we should be assaulted, if we were *so obstinate as to make Bon-fires and Illuminations* ; it is visible at first view what sort of Persons set them to work, and that a Design was previously formed to promote an Insurrection, and to begin (as the Rebels themselves gave out) with the Demolition of the Constitution Club.

And as we were the first who felt the Fury of that wild Project ; the thing speaks it self to be the Product of Principles diametrically opposite to ours : Unless we can be thought such weak Tools, as to hire a Mob to cut our own Throats ; or such young Conjurers, as to spirit up a Devil, to carry away our selves.

This

This Article further objecteth, and Clarke is Witness to the Truth of it; That I did promise the Damage sustained by the breaking of the Windows should be made good: And that it was made good by Captain Thomas.

Of what Law or Statute is this a Breach? Or what Inference can be drawn, but that it was generously done?—What if I and Captain Thomas should pay for all the Windows that were broken about the Town? What Court of Judicature would punish us?—This excess of Generosity might perhaps bring our Prudence into Question, but by no means affect our Innocence.

[The Defendant being then told that the rest were only Articles of form, he omitted them; but I shall set them down here with the designed Answers.]

The Eleventh pretended Article objecteth, That by reason of the Premises or at least most, or some one of them, I did on the 28th of May last disturb the publick Peace and Tranquillity of the University: And that I am to be esteem'd a Disturber of the Peace, and to be punished as such, according to the Exigency of the Statutes.

Art. 11:

But neither by reason of all, any, or even one of the Premises am I to be censured as a Disturber of the Peace.

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Let

Let those Answer this Charge, let those be esteem'd Disturbers of the Peace, who, as our Governours declare in their Programma of Jun. 4. To them unknown, did in a Tumultuous and Riotous manner wander from one part of the City to the other, breaking of Windows, rifling of Meeting Houses, and committing other Outrages.

Had I been a *real* Disturber of the Peace, I should have mixed with this profligate Gang; and then I might have lain hid among the Croud, equally with the rest, unknown, and undiscovered to this Day.

Art. 12.

The twelfth Article is, *that I am a Fellow of New College; and consequently subject to the jurisdiction of this Court.*

That I am a Fellow of New-College I acknowledge gratefully, and the Consequence willingly.

Art. 13.

The last Article objecteth, *That I know, believe, or have heard, that the Premises all and singular were, and are true, publick, notorious, and manifest: And that the publick Voice and Fame hath laboured, and doth labour concerning the same.*

That all or any one of the Premises, so far as they are Criminal, are *true, publick, notorious, and manifest*, I neither know, nor believe.

And as to any flying Reports: To curb the Tongues of Evil-Speakers, Lyars, and Slanderers,

Slanderers, is above our Power : And their reproaches are below our Care.

It is sufficient Satisfaction to me and the Gentlemen in my Company, that suitably to an Admonition in the Programma (Jun. 4. 1715.) we have demeaned our selves with that Gravity, Sobriety, and Loyalty, as may most redound to the Honour, and Interest of the University ; and entitle us to the Blessing of Almighty God, the Approbation of Good Men, and the Continuance of His Majesties Royal Protection and Favour.

I hope, Mr *Affessor*, I have made a full and satisfactory Answer to every Article exhibited against me. I believe that I have not omitted any part in the Charge or Evidence even *seemingly* material ; and I know that I have not committed any Action *really* Criminal.

The whole of our Intention on the 28th of May, was a proper Demonstration of Joy on that Auspicious Day which gave Birth to His Majesty. A Design not unworthy of Imitation and Applause.

But as this was tumultuously opposed by the Instigation of some Gentlemen over our Heads ; their turbulent Behaviour must be esteemed an additional Justification of our Conduct.

And if it had been proved that some of that Company gave a Barrel of Ale to the

Rioters, and mixed themselves with them, roaring and guzling, for an Ormond and a Bolingbroke:

If it had been proved that one of that Company advised Mr Thomson as a Friend *not to go to the Constitution Club on that Night for fear of an Assault :*

If it had been proved that the same Person offered two Guineas to the Mob, to march and pull down the Meeting-Houses.

If it had been proved that another of that Company did actually treat the Rioters with a Barrel of Ale, at the Angel, after they had rifled the Meeting-Houses :

If these things had been brought under Examination, this whole Affair would be set in a much clearer Light : And then it might have appeared who were, as it is already manifest who were not, the Congregators of a Mob, and the Authors and main Abettors of all the Mischiefs and Violences that ensued. None of us should then have been suspected for Disturbers of the Peace of his Majesty's Government : For whose Service I would rather dye under the Tortures of the Rack, than be found among the number of those, who have contributed to make the Crown uneasy on his Sacred Head.

And were it not that my Hands are almost tied up by my Profession, I might now perhaps be pleading the Cause of Virtue

Virtue in his Majesty's Camp at *Sterling* instead of answering to these pretended Crimes in the Chancellor's Court at *Oxford*.

Mr *Affessor* thanked the Gentleman for his Loyal Speech, and said he would consider the Arguments. And about a Fort-night afterwards finding no Article to be proved; but only the 5th, (*viz.*) of *a voluntary Presence at a Tavern on the 28th of May*; and judging the Observation of His Majesty's Birth-day to be a proper Excuse for such Default, he acquitted the Defendant, and dismissed the Cause: Reserving to himself a power of determining Expences.

For I think it was urged by the Proctor for the Office, that the Defendant and others having not put in and proved that Excuse by way of Defensive Plea at a proper Time, when they gave in their Answers to the Articles, and by that Means having led the Court into a great deal of Trouble; they ought to be condemned in Charges: (as well on the part of the Office, as to their own Proctor.) And therefore the *Affessor* ordered the Defendant's Proctor to give reason before the next Court-day, why the Expences of the Suit should not be laid on his Clients: or to that purpose.

Accord-

Accordingly two of them delivered the following Reasons in writing to Mr *Affessor*, desiring they might serve for the other Gentlemen in the same Circumstances.

“ Mr A. and Mr B. have been found
“ Guilty of no Article charged against
“ them, except that *for being at a
“ Tavern*: And the Penalty of this is
“ remitted on account of their alledg-
“ ing for their Excuse, (in their Defence
“ at the time of *Informations*) that
“ they went to the Tavern to Celebrate
“ the King’s Birth-day.

“ But however the Question remains,
“ whether they should not be Condemned
“ in Charges, and be obliged to pay the
“ Expences of the Suit, because they did
“ not urge this Excuse sooner in a regu-
“ lar manner by way of Defensive Plea.
“ They desire therefore to offer their
“ REASONS.

“ 1st, Why they did not alledge this
“ Excuse in that manner: And
“ 2dly, Why the main of this Cause,
“ and consequently the Charge occasi-
“ oned thereby, doth not depend upon
“ their alledging, or not alledging it.

“ One Reason why they did not
“ put in such Defensive Plea is, be-
“ cause it was a thing so very nota-
“ rious

"rious that the 28th of *May* was His
"Majesty's Birth-day, that for them to
"attempt a proof of it, or their De-
"sign to observe it, seemed perfect-
"ly needless.

"Besides, tho' they should alledge
"this Excuse, yet it being a matter of
"*Favour*, whether it should or should
"not be accepted, they did not think
"this a proper and necessary Defence,
"when they were to answer to a
"matter of *Fact*. And they were con-
"firmed in this Opinion, because in
"their *Informations* before Mr Vice-Chan-
"cellor and other Heads of Houses, in
"the presence of Mr *Assessor*, several of
"the Constitution-Club did depose up-
"on Oath, *That the Celebration of His*
"*Majesty's Birth-day was the reason of*
"*their going to the Tavern*: Or to
"that effect.

"And therefore as the *Articles* a-
"gainst them were grounded upon those
"*Informations*, and this *Excuse upon Oath*
"did not prevent this Article, they
"could not well suppose the pleading
"of it afterwards would take off the
"Penalty.

"If these Reasons should not be
"thought satisfactory, we add,
"2dly, *That the Main of this Cause*
"doth

" doth not depend upon our so alledging or not alledging such excuse.

" For we did *not contest* the Point of being at the Tavern, or *join Issue* in that Article; but acknowledged it from the Beginning. The Cause as to this *Article* was then at an end. So that we hope no Expences will be laid upon us, as *not being found Guilty of any Article in which Issue was joined*.

" Besides, the Charge of being at a Tavern was very inconsiderable in respect of the other *Articles*: And therefore our Plea and Proof of the above-mentioned Excuse could have no effect upon the main of the Cause: And the Proctor for the Office must have still endeavoured to have proved the other Articles, notwithstanding our being excused as to one.

" When we mentioned it as a seeming Hardship, that so much Expence and Trouble should be brought upon us only for being at a Tavern; Mr Assessor reply'd, that the Office would scarce have been promoted against us for this Fault alone; but that Mr Vice-Chancellor having other Penalties to demand of us, and other more important Faults to charge us with, he thought " proper

" proper to demand this Mulct at the
" same time: Or to this Effect.

" So that the Trouble which the Court
" hath been put to , and the Charges
" which have arisen, do in no wise de-
" pend on our alledging or not alledging
" our Excuse by way of Defensive
" Plea.

" Nay, should we have alledged and
" proved such Excuse, this very thing
" must have caused *an Additional Trou-
ble to the Court.*

" If therefore it shall appear,
" Either that we had any reason not
" to put in such Excuse by way of
" Defensive Plea,

" Or that the chief Trouble and Ex-
" pences of this Suit were not caused
" by our not duly alledging the said
" Excuse,

" We cannot but hope that we shall
" not be Condemned in any Charges
" in this Cause.

But these Reasons being found insuf-
ficient, the Defendants were Condemned
in the Expences of the Suit *cum mode-
ramine*, with some Alleviation. And ac-
cordingly, when ^{March 11.} a Bill of Charges was
brought in, Mr *Affessor* struck off about
Twenty Shillings,

As there lies an Appeal from the
Chancellors Court to the Delegates of Com-

gregation, if it be lodged within Fifteen Days, and thence to the Delegates of Convocation, the Defendants were of Opinion that the following Queries afford'd just Cause of appealing.

Whether for the Chancellor's Court to proceed against Scholars for being at a Publick-House by way of Article and Proof, be a proper and regular Method : And if it be,

Whether the Penalty ought not first to be demanded, before they are put to the Expence of a Prosecution at Law : And,

Whether those, who are found Guilty of no Article in which they have joined Issue, can be obliged to defray the Charges of the whole Suit.

But besides that some deference is due to the Opinion of the Court, the Gentle men found themselves already involved in sufficient Trouble and Expence: The Cause having depended for about 8 Months; and the whole Charge not amounting to less than 100*l.* And therefore they shall content themselves with leaving it to the Consideration of the Members of the University, and particularly those who have the Honour to be Delegates, how far their common Privileges are maintained and strengthned in this Cause.

And

And when the *Constitutioners* shall lay open to publick view a full State of their Case, and appeal to the Reason of Mankind, they are perswaded that the *Representation of an Oxford-shire Grand-jury* will appear to have proceeded either from Mistake or Prejudice. They further hope to receive no more of those *Affronts, Insults, and Indignities*, which as they chiefly proceeded from Persons of the lowest Rank in the University; so are they the genuine Effect of *Uncultivated Manners, and Gothick Principles.*

F I N I S

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S I V I A